

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Wallace James Beaulieu,

Civil No. 13-1893 (DWF/JSM)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Lucinda Jesson, Commissioner of the
Minnesota Department of Human Services,

Respondent.

This matter is before the Court upon Petitioner Wallace James Beaulieu's ("Petitioner") objections (Doc. No. 4) to Magistrate Judge Janie S. Mayeron's August 16, 2013 Report and Recommendation (Doc. No. 3) insofar as it recommends that:

(1) Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied; and (2) this action be summarily dismissed without prejudice for lack of jurisdiction. Respondent Lucinda Jesson, Commissioner of the Minnesota Department of Human Services, ("Respondent") filed a memorandum in response to Petitioner's objections on September 18, 2013. (Doc. No. 9.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

Having carefully reviewed the record, the Court concludes that Petitioner's objections do not warrant departure from the Magistrate's ultimate Recommendation. While the Magistrate Judge determined that the petition in this case constitutes a second or successive petition over which the Court does not have jurisdiction, she also recommended that this action be dismissed without prejudice so that Petitioner may seek pre-authorization from the Court of Appeals to permissibly file such a petition. *See* 28 U.S.C. § 2244(b)(3); *McNabb v. Yates*, 576 F.3d 1028, 1029 (9th Cir. 2009) (holding that "the dismissal of a first petition with prejudice because of a procedural default (and a failure to show cause and prejudice) . . . constitutes a disposition on the merits and renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244(b)"). The undersigned agrees with the Magistrate's determination and finds that dismissal of this matter without prejudice will provide Petitioner with the opportunity to seek appropriate authorization from the Eighth Circuit to file a successive habeas petition and assert his ineffective assistance of counsel claim.

The Court thus concludes, as did Magistrate Judge Mayeron, that Petitioner is not entitled to habeas relief at this time. Consequently, the Court denies the petition and dismisses this matter without prejudice.

Based upon the *de novo* review of the record, and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Wallace James Beaulieu's objections (Doc. No. [4]) to Magistrate Judge Janie S. Mayeron's August 16, 2013 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Janie S. Mayeron's August 16, 2013 Report and Recommendation (Doc. No. [3]) is **ADOPTED**.

3. Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. No. [1]) is **DENIED**.

4. This action is summarily **DISMISSED WITHOUT PREJUDICE FOR LACK OF JURISDICTION**.

5. Petitioner is NOT granted a Certificate of Appealability.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 15, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge